

# 6 A DAE4

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO/SB/64 (09-04)  
Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
10646-007-U20

First named inventor: Carlos Neto Mendes

Application No.: 09/641,790

Art Unit: 3721

Filed: 08/18/2000

Examiner: S.F. Gerrity

Title: IMPROVEMENTS IN A MODULAR FRUIT JUICE EXTRACTION SYSTEM AND CONFIGURATION FOR A FRUIT JUICE  
FILTER FOR THE EXTRACTION OF FRUIT JUICE

**RECEIVED**

DEC 09 2004

**OFFICE OF PETITIONS**

Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
FAX (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

☒ Small entity-fee \$ 685.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in  
the form of Response under 37 CFR 1.111 (identify type of reply):

☐ has been filed previously on 12/07/2004 MAHMED1 00000058 09641790  
☒ is enclosed herewith. 01 FC:2453 685.00 OP

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_.

☐ has been paid previously on \_\_\_\_\_.  
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

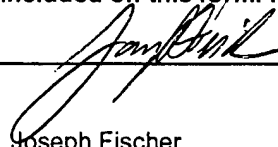
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

  
\_\_\_\_\_  
Signature

November 30, 2004  
\_\_\_\_\_  
Date

Joseph Fischer  
\_\_\_\_\_  
Typed or printed name

51,210  
\_\_\_\_\_  
Registration Number, if applicable

Beusse, Brownlee, Wolter, Mora & Maire, P.A.  
\_\_\_\_\_  
Address  
390 North Orange Avenue, Suite 2500  
Orlando, FL 32801  
\_\_\_\_\_  
Address

(407) 926-7727  
\_\_\_\_\_  
Telephone Number

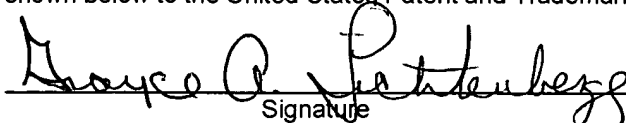
- Enclosures: ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☒ Additional sheets containing statements establishing unintentional delay
- ☒ Other: Appendices A-D supporting Additional Sheets (also containing a Declaration)

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

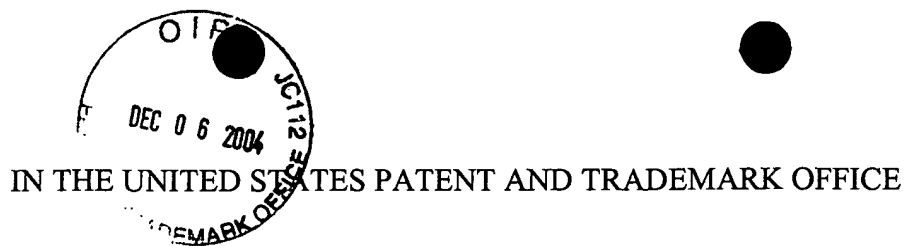
I hereby certify that this correspondence is being:

- ☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

November 30, 2004  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature

Grayce A. Lichtenberger  
\_\_\_\_\_  
Typed or printed name of person signing certificate



In re: Application of: Carlos Neto Mendes

Group Art Unit: 3721

Applicant: Carlos Neto Mendes

Serial No.: 09/641,790

Atty. Dkt.: M-95-3195-U.20-CIP (old)  
10646-007-U20 (new)

Internal Code: U.20

Filed: 08/18/2000

Title: IMPROVEMENTS IN A MODULAR FRUIT JUICE EXTRACTION SYSTEM AND  
CONFIGURATION FOR A SELF-CLEANING FILTER FOR THE EXTRACTION OF FRUIT  
JUICE

PAPER PROVIDING  
ADDITIONAL SHEETS CONTAINING STATEMENTS ESTABLISHING  
UNINTENTIONAL DELAY,  
TO ACCOMPANY PETITION UNDER 37 CFR 1.137(b) FOR REVIVAL OF AN  
APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Commissioner for Patents:

Part I. Introduction

This Paper with its Appendices accompanies Applicant's Petition to Revive the above-referenced unintentionally abandoned patent application. That Petition is filed in accordance with 37 CFR 1.137(b).

At the outset, Applicant informs the Commissioner that Applicant, Mr. Carlos Mendes, was deceived by the Applicant's former attorney of record, Mr. George Bode, former Registration number 30,028. As a result of Mr. Bode's deceit, which included Mr. Bode's failure to communicate to the Applicant the true status of this and other applications, the Applicant did not realize the true status of the present application for a sustained period of time.

Applicant also informs the Commissioner that on November 4, 2000 Applicant filed a Petition to Revive another unintentionally abandoned patent application, serial number 09/028,187. The facts and evidence presented in and with that Petition to Revive are substantially re-presented here for the time periods that are in common.

During the period from the abandonment of the present application (for which a Notice of Abandonment was mailed 03/03/2003) to August 2004, the Applicant did not know of the unintentional abandonment of the present application. Mr. Mendes regularly queried Mr. Bode about the status of pending applications. Correspondence with Mr. Bode reinforced Mr. Mendes' belief that the present application was properly in force. Mr. Bode continued to deceive Mr. Mendes through June 2004 when Mr. Mendes transferred his representation to the present law firm. From June 2004 to the present filing of the Petition to Revive, the present attorney and Mr. Mendes operated with diligence, first to gather information regarding the status of the present application, and then to prepare this Petition to Revive.

Part II of this Paper refers to evidence (provided in Appendices) and provides analysis to support the conclusion that Mr. Bode deceived the Applicant after having failed to respond to the non-final Office action mailed 07/03/2002, and that his deception included concealing this omission. As such, any mistakes (collectively including his errors, and/or omissions) on the part of the former attorney, Mr. Bode, should not be imputed to nor bind the Applicant. That is, when an attorney intentionally conceals a mistake he made, thereby depriving the client of a viable opportunity to cure the consequences of the mistake, the attorney's mistake is not attributed to the client. (See Appendix A-1, Decision, Paper 13 of the Office of Petitions, regarding Anthony D. Cipollone, 2001, footnote 22, and A-2, *In re Application of Robert Lonardo*, 1990 Commr. Pat. 18, 17 USPQ2d 1455 (copies provided in Appendix A)).

The deceit by Mr. Bode follows a pattern of behavior that Mr. Bode was found to exhibit according to the "Final Decision Under 37 C.F.R. § 10.156," Proceeding No. D02-14. This Final Decision resulted in Mr. Bode's suspension from practice as a registered patent attorney (See Appendix A-3).

The delay in filing the Petition to Revive exceeds one year from the date of abandonment. Applicant provides in Part III of this Paper a showing as to how the delay was unintentional between the date the Applicant was first notified by the Patent Office that the application was abandoned and the date of filing the Petition to Revive.

Given the relatively long chain of co-pending patent applications, of which the present application is properly a member (although it does not claim priority to all such applications), a partial list of these applications, providing the attorney docket number, internal coding for these (i.e., U-1, U-2, etc.), serial numbers and filing dates is provided as document B-0 in Appendix B.

## Part II: Evidence and Analysis Showing Mr. Bode Deceived Applicant

Applicant respectfully asserts that the mistakes (collectively including his errors, and/or omissions), of his former attorney, Mr. George Bode, should not be imputed to the Applicant in view of Mr. Bode's ongoing concealment of his mistakes and his pervasive deceit as to these mistakes and supposed corrective action being taken. Thus, even if Mr. Bode knew of the abandonment of the present application and did not promptly act to revive it, this should not be imputed to the Applicant under the present circumstances.

In the alternative (or combination with the above), Applicant respectfully asserts that the mistakes, acts and omissions of Mr. Bode rise to a level of more than ordinary neglect or gross negligence, and therefore should not be charged to the Applicant.

*In re Application of Robert Lonardo*, 1990 Commr. Pat. 18, 17 USPQ2d 1455 has facts analogous to the present facts, and is provided in Appendix A-2. In *In re Lonardo*, a registered patent attorney was found to have deceived his client, a patent applicant, and the record showed this deceit included a failure to adequately communicate the true status of an abandoned application that was in a series of applications. The applicant's efforts to communicate with his attorney were found to be not less than diligent.

As to the relevant period of deception by Mr. Bode, the following documents (copies in Appendix B, numbered as below, except for item 8, which is in Appendix C) provide evidence of Mr. Bode's clear deceit of the Applicant as to the status of this as well as other applications. These are arranged in chronological order except for the item 8, the Declaration of the Applicant, Mr. Carlos Mendes, which is Appendix C.

B-1a. In a July 17, 2002 e-mail, Mr. Bode informed Mr. Mendes that claims were allowed in an Office action for the present application, and that Mr. Bode "will study the matter and get back to [Mr. Mendes]." (Comments: Mr. Bode never provided a substantive analysis to Mr. Mendes, nor is there evidence that Mr.

Bode filed a reply to this Office action. Thus, Mr. Bode did not fulfill the commitment made to Mr. Mendes in this e-mail. At a minimum, Mr. Bode misled Mr. Mendes in this e-mail by failing to later act as he stated he would.

Alternatively, if when sending this e-mail Mr. Bode had no intent of later acting as he stated he would, then this represents intentional deceit.)

- B-1b. November 5, 2002 e-mail from Mr. Bode to Mr. Mendes: "I am completing the necessary petitions and will have copies of all documents to you ASAP."

(Comment: There is no record of petitions of any kind being filed by Mr. Bode during this period for Mr. Mendes' applications, and no copies were received by Mr. Mendes. This e-mail was after the end of the 3-month timely filing period for replying to the 07/03/2002 Office action. At this time Mr. Bode could have filed a Petition for an Extension of Time with a complete Reply to that Office action, but did not (based on the file history). Although this e-mail primarily pertained to earlier, unintentionally abandoned applications, the term "necessary petitions" arguably should include any petition (even if a routine one for an extension of time) needed to keep the present application pending.)

- B-2. November 26, 2002 e-mail from Mr. Bode to Mr. Mendes: "I am working on the InterCitrus intellectual property portfolios." (Comments: First, this e-mail from Mr. Bode followed Mr. Mendes' letter of November 22, 2002 regarding "Lack of Service," (see advance copy e-mail, B-18). Second, and critically as to evidence of Mr. Bode's deceit, nothing exists in this or other of applicant's patent application files documenting work completed and submitted to the USPTO by Mr. Bode from this date forward. That is, available hard copy files and the PAIR File Histories indicate that no paper was filed by Mr. Bode for this or any other of Mr. Mendes' patent applications on or after November 26, 2002.)

- B-3. March 7, 2003 e-mail from Mr. Bode to Mr. Mendes: Mr. Mendes wrote in an e-mail dated 02/25/2003, "I have not heard from you in a while, nor have I received any materials related to your most recent filings of corrective actions." In a March 7, 2003 e-mail Mr. Bode replied, "I am in New Orleans until March 11, 2003. I will contact you with details by then." (Comment: Mr. Bode failed to provide such details as promised, likely because any details would have shown he

had taken no action. Accordingly, this is a deceptive reply to another request for substantiation of corrective actions promised by Mr. Bode to Mr. Mendes.)

- B-4. April 1, 2003 e-mail from Mr. Bode stating "I will have a reply shortly."

(Comment: In the context of the pattern of communications, this represents another deceptive promise, as no relevant documents or forthright reply was ever provided by Mr. Bode.)

- B-5. Meeting notes of Mr. Mendes from an October 21, 2003 meeting between Mr. Bode and Mr. Mendes, Mr. Bode ("GAB" in the notes) indicated he will file a Petition to Make Special" for U.20 (which corresponds to U.S. application serial no. 09/641,790 for which this Petition is made). (Comment: A review of the file (or information from a Status Request) would have shown that this application had gone abandoned. Thus it can be reasonably inferred that when Mr. Bode made this statement of plan of action to Mr. Mendes, Mr. Bode knew that U.S. application serial no. 09/641,790 had gone abandoned, and acted to deceive Mr. Mendes by making reference to a Petition to Make Special, which would not have relevance to an abandoned application (for which Mr. Bode should have filed a Petition to Revive based on past promises and assurance, but which the record shows he did not)).

- B-6. January 18, 2004 e-mail from Mr. Bode stating, "I have made another status inquiry of U.20 and the other pending patents." (Comment: There is no record at the USPTO of any status inquiry for the U.20 application (ser. No. 09/641,790) nor any other patents, based on review of the PAIR file histories of this and later-filed patent applications. This is strong evidence of Mr. Bode's ongoing deception of Mr. Mendes, and is particularly indicative of Mr. Bode's efforts to hide his mistakes and omissions.)

- B-7. Meeting notes of Mr. Mendes from a May 26, 2004 meeting with Mr. Bode. Mr. Bode indicated to Mr. Mendes that there was no news to report regarding U.20 (ser. no. 09/641,790). (Comment: The latest item in the file of ser. No. 09/641,790 received from Mr. Bode by the present attorney was a non-final Office action mailed 07/03/2002. The PAIR File History record shows no response filed after this, nor a Status Inquiry, nor a Petition to Revive. This

provides evidence Mr. Bode's ongoing deception of Mr. Mendes as late as May 2004.)

8. Additional evidence of Mr. Bode's pattern of deceit is found in Mr. Mendes' Declaration (Appendix C), which shows that Mr. Bode repeatedly assured Mr. Mendes that Mr. Bode had taken appropriate corrective action. Mr. Bode also used as an excuse for the delays an assertion that the Patent Office was far behind in processing patent applications.

In *In re Lonardo*, Lonardo's attempts to obtain information during his attorney's deceitful assurances were found to prove that Mr. Lonardo was no less than diligent, and that the attorney misled Lonardo. Similarly, here the facts favor a finding that Mr. Mendes was no less than diligent, and the acts and omissions of Mr. Bode should not be impugned to the Applicant. More particularly, the facts in this case strongly support the conclusion that Mr. Bode intentionally concealed mistakes he made in prosecuting the present application by 1) not timely responding to the 07/03/2002 non-final Office action by 10/03/2002; 2) not responding to that Office action by 07/03/2003 with payment of extension fees; and by 3) not filing for a Petition to Revive after 01/03/2003. Mr. Bode continued the deception by assuring the Applicant that corrective action had been taken, by promising supporting documents, and by not delivering the latter (See Part III, below). These facts support the same conclusion found in *In re Lonardo*, that the Applicant was not less than diligent for the relevant time period, i.e., from prior to 10/03/2002 through at least 05/26/2004. The diligence during the period from this last date to the filing of the Petition to Revive is explained in a following section, Part III (B).

### Part III: Provision of required information<sup>1</sup>

#### (A) Information as to when the Applicant first (and subsequently) became aware of the abandonment of the application.

The Applicant, Mr. Carlos Mendes, was informed by present counsel on July 16, 2004 that this application had gone abandoned in January 2003 for failure to respond to an Office

---

<sup>1</sup> Paragraph (B) in the MPEP, page 700-185, of the rev. 2 May 2004 edition, requires a showing of the cause of delay between the date that the applicant (or his Representative) was first notified that the application was abandoned and the date a Petition under 37 C.F.R. 1.137(b) was filed, and how such delay was unintentional.



action. This information was based on access to private PAIR for this application. Prior to this, since June 28, 2004, the present counsel had reviewed files obtained from Mr. Bode, but such files could not be determined to be complete, so abandonment could not be confirmed until access to private PAIR was obtained.

Appendix B also provides copies of e-mail correspondence, mail, and teleconference and meeting notes that document that, beginning in August 2002, Mr. Mendes repeatedly asked for Mr. Bode to review the status of applications and provide assurance that all matters were under control and rectified as needed (See B-10 to B-35). In a number of these communications he also requested copies of supporting documentation as to the revival efforts promised by Mr. Bode. In other correspondence he communicated to arrange in person meetings with Mr. Bode in Florida. Collectively, these documents provide evidence of Mr. Mendes' diligence.

As indicated in the Declaration, Appendix C, when Mr. Mendes first communicated to Mr. Bode about abandonment of earlier applications as communicated by Mr. Edward Polk of the USPTO Office of the Solicitor, Mr. Bode indicated that he believed what Mr. Polk had stated must be a mistake. Later, at meetings in September 2002, Mr. Bode stated that some errors had been made and that perhaps some applications went unintentionally abandoned. Once the unintentional abandonment of certain applications was confirmed, Mr. Bode assured Mr. Mendes that Mr. Bode would correct whatever problems had arisen, including by reviving applications as needed. Mr. Mendes' communications during this time stated the October 3, 2002 timely deadline for a Reply, and also requested that Mr. Bode confirm the necessary action was taken.

At meetings on December 11 and 19, 2002, Mr. Bode continued to provide reassurance to Mr. Mendes that Mr. Bode had taken necessary action to revive needed applications and at various meetings with Mr. Bode in late 2002, and throughout the year of 2003, Mr. Mendes was constantly assured that all requested office actions, and all documents related to the revival of patents, had been filed in a timely and correct manner. During this period, and until Mr. Mendes final meeting with Mr. Bode in May of 2004, Mr. Bode contended that delays in the approval of the pending applications were due only to "unusually long processing times experienced by the USPTO due to internal changes and lack of personnel", and advised Mr. Mendes to still be patient in theses case, but that "soon, things would begin to return to normal" and pending patent

---

Applicant believes these requirements are met in A and B of this Part. If further information is required, Applicant requests the opportunity to provide this as supplemental information to this Paper.

applications would eventually issue. In subsequent meetings, Mr. Bode continued to assure Mr. Mendes that all corrective actions that needed to be taken had been taken, so that all subject matter that they wanted to be pending was pending in patent application serial numbers 09/641,790 and 09/835,919 (U.20-CIP (the present application) and U.21-CIP, by internal designation).

The result of this ongoing deception was to delay Mr. Mendes from learning of the true status of this and other patent applications. Also, each time, during late 2002 through 2003, when Mr. Mendes reached a point of seeking other counsel, Mr. Bode was able to reassure Mr. Mendes that, despite delays and lack of documentation, Mr. Bode had taken necessary corrective action and what was required was to wait for a response from the Patent Office.

In summary, as to when abandonment of the present application was known by the parties:

1. Mr. Bode knew should have known that the application went abandoned on 01/03/2003, after failing to have responded to the 07/03/2002 non-final Office action and after failing to pay for an extension of time.
2. After changing representation to the present attorney, Mr. Mendes was informed, on July 16, 2004, that this patent application had gone abandoned based on access on 7/16/2004 to private PAIR for this application. (See Appendix D-1, Page 1 of Summary provided July 16, 2004 to Mr. Mendes and Appendix D-2, Private PAIR print-out including File History summary).

(B) A showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the Applicant.

Generally, this showing is complicated by the fact that Mr. Mendes repeatedly relied on Mr. Bode's deceitful assertions that Mr. Bode was taking actions to correct problems, including reviving the present application if needed, or was investigating the status of the applications, including the present application. In fact, Mr. Bode failed to properly communicate the true status of this and other patent applications to Mr. Mendes, to Mr. Mendes' ultimate detriment. Mr. Bode's failure to properly communicate the true status of the present application, particularly the clearly deceitful communications in the latter period, delayed Mr. Mendes'

discovery of the unintentionally abandoned status of the present application despite Mr. Mendes' exercise of due care and diligence.

First, it is noted that between 1995 and 2002, Mr. Mendes had an ongoing client/attorney relationship with Mr. Bode. During this period Mr. Bode was able to bring to issue four patents for Mr. Mendes. Thus, Mr. Mendes had a well-founded, experience-based confidence in Mr. Bode as his patent attorney. (See Declaration, Appendix C).

The August 2002 communication with Mr. Polk alerted Mr. Mendes to possible problems regarding unintentionally abandoned applications. Between August 2002 and mid-2004, Mr. Mendes made repeated efforts to obtain from Mr. Bode confirmation and documentation that this and other applications were being handled as needed (See B-10 to B-35). Mr. Mendes exercised diligence in making these inquiries. During this period he continued to request information from Mr. Bode (e.g., see April 20, 2004 e-mail, B-35). After selection in June 2004 of the present law firm to take over patent and trademark work from Mr. Bode, the present attorney obtained Mr. Bode's hard copy files for the present application and others from Mr. Bode on June 28, 2004 (see Appendix D-3, the June 28, 2004 e-mail from Mr. David Maire, of the present firm, to Mr. Carlos Mendes).

After studying the files obtained from Mr. Bode for a relatively large number of U.S. and foreign patent applications, and after filing Change in Power of Attorney forms for the relevant U.S. applications, the present attorney was able to confirm, on July 16, 2004, that the present application had in fact gone abandoned due to no response to the 07/03/2002 Office action having been received by the Patent Office.

Based on the communications from Mr. Mendes to Mr. Bode (i.e., see B12, B13), it is clear that Mr. Mendes intended that Mr. Bode properly respond to the 07/03/2003 Office action. Throughout the year of 2003, Mr. Mendes was constantly assured in telephone conversations and personal meetings with Mr. Bode, that all requested office actions, and all documents related to the revival of patents, had been filed in a timely and correct manner. Mr. Bode contended that delays in approvals were related only to "unusually long processing times experienced by the USPTO due to internal changes and lack of personnel", and that "soon, things would begin to return to normal." Also, communications from Mr. Mendes to Mr. Bode indicate Mr. Mendes' belief that the present application was pending (i.e., see B26). Unfortunately, when Mr. Bode responded to Mr. Mendes' communications, Mr. Bode was not forthright as to the status of the

present application. This contributed substantially to the delay in Mr. Mendes discovering the abandoned status of the present application despite the exercise of diligence on the part of Mr. Mendes.

As to the delay between July 16, 2004, and the filing date of this Petition to Revive, during this time information was being gathered by the undersigned attorney to prepare this and another Petition, for U.S. Patent Application serial number 09/028,187 (U.17). In part because the U-17 application was filed earlier, and went abandoned earlier, it was decided to prepare and file the Petition to Revive serial number 09/028,187 first. Also, part of this information gathering included first filing a Freedom of Information Act ("FOIA") request for documents related to disciplinary action against Mr. Bode (See Appendix D-4, providing a chain of FOIA correspondence). This FOIA Request, submitted by e-mail on August 4, 2004, was refused based on the pending public availability of at least some of this information (See Appendix D-5). Then, on or around September 15, 2004, "Final Decision Under 37 C.F.R. § 10.156," Proceeding No. D02-14, became available publicly online at the USPTO website. This is provided herein, as Appendix A, as character evidence supportive of Mr. Bode's behavior alleged herein. A second FOIA Request was filed September 30, 2004, requesting documents not made public, including the Initial Decision (See Appendix D-6, providing a chain of FOIA correspondence). Applicant is filing this Petition before receipt of the information requested in this second FOIA Request, and will supplement this Petition with relevant information if such is obtained through the second FOIA Request.

#### Part IV Concluding Statements

In conclusion, at least through August 2002, Mr. Mendes had a good faith belief that his registered and experienced patent attorney, Mr. George Bode, who had provided what he considered good legal services since 1995, was taking the proper steps to preserve rights in all of Mr. Mendes' patents and patent applications. But for Mr. Bode not filing a Reply/Amendment with, as needed, a Request for Extension of Time for the 07/03/2002 Office action of the present application, the present application would not have gone abandoned. Mr. Bode's mistakes (collectively including his errors, and/or omissions), and the multiple deceits and intentional concealment by Mr. Bode of his mistakes, during the period, at a minimum, from October 3,

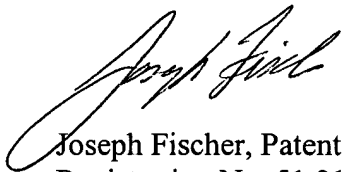
2002 through May 2004, should not be imputed to Mr. Mendes. The Applicant, Mr. Mendes, was deprived of an earlier opportunity to cure the mistakes of Mr. Bode due to Mr. Bode's deceit, including concealment of his mistakes. Mr. Bode's mistakes as to the present application should not be charged to the Applicant when so followed by a period of concealment of the mistakes. The Applicant was diligent during all relevant time periods, and the Petition to Revive should be granted because the abandonment was unintentional as to the Applicant.

Applying the analysis of *In re Lonardo* to analogous facts in the present application, the Commissioner should find that for the period of deception by Mr. Bode the Applicant has established unintentional delay under 37 C.F.R. 1.137(b). Combining this with the later diligence from June 2004 to the present filing of the Petition to Revive, the Commissioner should find, as asserted in the Petition, that the entire delay in filing the required Reply from the due date for the Reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional.

The Applicant respectfully requests the opportunity to supplement this Paper with additional information if needed by the Commissioner to find in Applicant's favor. As appropriate, Attorney for Applicant may be contacted at the telephone number below to request such information.

**Also, as appropriate, the undersigned is willing to participate in telephone and/or in in-person interviews with the Office of Petitions to clarify and/or resolve any matters relevant to revival of this application.**

Respectfully submitted,

 Nov. 30, 2004

Joseph Fischer, Patent Attorney  
Registration No. 51,210

Beusse Brownlee Wolter Mora & Maire, P.A.  
390 N. Orange Avenue, Suite 2500  
Orlando, FL 32801  
Telephone: 407-926-7727  
Fax: 407-926-7720